

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

ALAN MOORE AND CHRISTINA VILLAREAL,
INDIVIDUALLY AND AS NEXT FRIENDS OF
RYAN ALEXANDER MOORE, A MINOR,

Plaintiffs,

 \mathbf{v}_i

ELIZABETH PADODA, DONALD ECKHARDT,
SADLER CLINIC ASSOC., CHCA CONROE LP,
AND UNITED STATES OF AMERICA.

Defendants.

CIVIL ACTION H-11-884

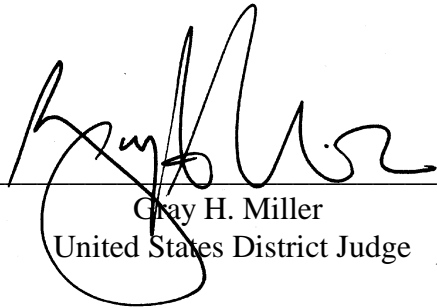
ORDER

Pending before the court is defendant the United States of America’s motion to dismiss and substitute (Dkt. 2) and plaintiffs Alan Moore and Christina Villareal’s motion to remand (Dkt. 5). The United States removed this case from state court and moved to substitute itself as a defendant in place of defendant Donald Eckhardt, claiming that Eckhardt was a qualified contractor working within the scope of his contract during the relevant time period and is thus deemed a federal employee under the Federal Tort Claims Act, 28 U.S.C. §§ 1346(b), 2571 *et seq.* However, the United States, in its response to plaintiffs’ motion to remand, moved to withdraw its certification relating to Eckhardt’s scope of employment because events subsequent to its removal of the case indicate that Eckhardt “may not be a deemed employee of the United States,” and that, regardless, he “was not a federal employee acting within the scope of his employment at the time of the acts or omissions forming the basis for the allegations in . . . [the] Complaint.” Dkt. 8. Thus, the United States concedes that the court “may remand the case” and that the motion to dismiss is now moot. *Id.* The United States’ motion to withdraw the certification (Dkt. 8) is GRANTED. Moreover, given

the United States' concession that remand is appropriate, plaintiffs' motion to remand (Dkt. 5) is GRANTED. This case is REMANDED to the 165th Judicial District Court of Harris County, Texas. Additionally, the United States' motion to dismiss (Dkt. 2) is DENIED AS MOOT, and its motion to substitute itself in place of Dr. Eckhardt (Dkt. 2) is DENIED.

It is so ORDERED.

Signed at Houston, Texas on April 26, 2011.



Gray H. Miller
United States District Judge